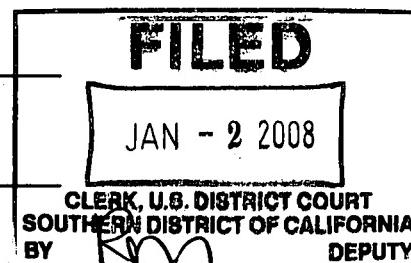


DAVID C. BROWN  
 NAME  
 F-55818  
 PRISON NUMBER  
 POB 600, CIM MSF

CURRENT ADDRESS OR PLACE OF CONFINEMENT  
 CHINO, CA 91708-0600

CITY, STATE, ZIP CODE.



2254	✓	1983
FILING FEE PAID		
Yes	No	✓
HPP MOTION FILED		
Yes	No	✓
COPIES SENT TO		
Court	✓	ProSe

**UNITED STATES DISTRICT COURT**  
**SOUTHERN DISTRICT OF CALIFORNIA**

DAVID CARLTON BROWN  
 (FULL NAME OF PETITIONER)

**PETITIONER**

v.

M.E. Poulos, Warden, et. al.  
 (NAME OF WARDEN, SUPERINTENDENT, JAILOR, OR AUTHORIZED PERSON HAVING CUSTODY OF PETITIONER [E.G., DIRECTOR OF THE CALIFORNIA DEPARTMENT OF CORRECTIONS])

**RESPONDENT**  
 and

JERRY BROWN  
 The Attorney General of the State of California, Additional Respondent.

Civil No

'08 CV 0017 JM NLS

(TO BE FILLED IN BY CLERK OF U.S. DISTRICT COURT)

**PETITION FOR WRIT OF HABEAS CORPUS**

UNDER 28 U.S.C. § 2254  
 BY A PERSON IN STATE CUSTODY

1. Name and location of the court that entered the judgment of conviction under attack: SUPERIOR COURT OF CALIFORNIA, SAN DIEGO COUNTY, 220 W. BROADWAY, SAN DIEGO, CALIFORNIA
2. Date of judgment of conviction: 11/2/06; SENTENCED 12/5/06
3. Trial court case number of the judgment of conviction being challenged: SUPERIOR COURT #SCD178177
4. Length of sentence: (6) YEARS



13. If you filed a petition for certiorari in the United States Supreme Court, please answer the following with respect to that petition:
- (a) Result: \_\_\_\_\_ N/A  
 (b) Date of result (if known): \_\_\_\_\_ N/A  
 (c) Case number and citation (if known): \_\_\_\_\_ N/A  
 (d) Grounds raised: \_\_\_\_\_ N/A  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_
- COLLATERAL REVIEW IN STATE COURT**
14. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions (e.g., a Petition for Writ of Habeas Corpus) with respect to this judgment in the California Superior Court?  
 Yes  No
15. If your answer to #14 was "Yes," give the following information:
- (a) California Superior Court Case Number (if known): \_\_\_\_\_ N/A  
 (b) Nature of proceeding: \_\_\_\_\_ WRIT OF HABEAS CORPUS; APPLICATION FOR HEARING AND RELEASE ON OWN RECOGNIZANCE  
 (c) Grounds raised: \_\_\_\_\_ JURY MISCONDUCT; DOUBLE JEOPARDY; ABUSE OF DISCRETION  
 VIOLATION OF DUE PROCESS OF LAW; REQUEST IMMUNITY FROM THIS FORM OF PROSECUTION  
 \_\_\_\_\_  
 \_\_\_\_\_
- (d) Did you receive an evidentiary hearing on your petition, application or motion?  
 Yes  No PENDING
- (e) Result: \_\_\_\_\_ N/A  
 (f) Date of result (if known): \_\_\_\_\_ N/A
16. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions (e.g., a Petition for Writ of Habeas Corpus) with respect to this judgment in the California Court of Appeal?  
 Yes  No

17. If your answer to #16 was "Yes," give the following information:

- (a) California Court of Appeal Case Number (if known): D051427

(b) Nature of proceeding: CONSOLIDATION OF WRIT AND DIRECT APPEAL

(c) Names of Judges participating in case (if known) N/A

(d) Grounds raised: VIOLATION OF DUE PROCESS OF LAW; JURY MISCONDUCT;  
ABUSE OF DISCRETION; DOUBLE JEOPARDY; REQUEST IMMUNITY FROM THIS FORM  
OF PROSECUTION; RELEASE ON OWN RECOGNIZANCE

(e) Did you receive an evidentiary hearing on your petition, application or motion?  
 Yes    No   PENDING

(f) Result: \_\_\_\_\_

(g) Date of result (if known): \_\_\_\_\_

18. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions (e.g., a Petition for Writ of Habeas Corpus) with respect to this judgment in the **California Supreme Court**?  Yes  No

19. If your answer to #18 was "Yes," give the following information:

- (a) California Supreme Court Case Number (if known): N/A

(b) Nature of proceeding: HABEAS CORPUS FOR HEARING & APPLICATION FOR O.R.  
RELEASE ON OWN RECOGNIZANCE

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(c) Grounds raised: \_\_\_\_\_  
SEE PREVIOUSLY LISTED GROUNDS  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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(d) Did you receive an evidentiary hearing on your petition, application or motion?  
 Yes    No        PENDING

(e) Result: \_\_\_\_\_

(f) Date of result (if known): \_\_\_\_\_

20. If you did ***not*** file a petition, application or motion (e.g., a Petition for Review or a Petition for Writ of Habeas Corpus) with the **California Supreme Court**, containing the grounds raised in this federal Petition, explain briefly why you did not:

N/A

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### **COLLATERAL REVIEW IN FEDERAL COURT**

21. Is this your **first** federal petition for writ of habeas corpus challenging this conviction?

Yes  No (IF "YES" SKIP TO #22)

(a) If no, in what federal court was the prior action filed? SAME IN THIS COURT

(i) What was the prior case number? #05-CV-0061-IEG (PCL)

(ii) Was the prior action (CHECK ONE):

Denied on the merits?

Dismissed for procedural reasons?

(iii) Date of decision: N/A

(b) Were any of the issues in this current petition also raised in the prior federal petition?

Yes  No

(c) If the prior case was denied on the merits, has the Ninth Circuit Court of Appeals given you permission to file this second or successive petition?

Yes  No

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#### **CAUTION:**

- **Exhaustion of State Court Remedies:** In order to proceed in federal court you must ordinarily first exhaust your state court remedies as to each ground on which you request action by the federal court. This means that even if you have exhausted some grounds by raising them before the California Supreme Court, you must first present *all* other grounds to the California Supreme Court before raising them in your federal Petition.
  - **Single Petition:** If you fail to set forth all grounds in this Petition challenging a specific judgment, you may be barred from presenting additional grounds challenging the same judgment at a later date.
  - **Factual Specificity:** You must state facts, not conclusions, in support of your grounds. For example, if you are claiming incompetence of counsel you must state facts specifically setting forth what your attorney did or failed to do. A rule of thumb to follow is — state who did exactly what to violate your federal constitutional rights at what time or place.
-

**GROUND FOR RELIEF**

22. State *concisely* every ground on which you claim that you are being held in violation of the constitution, law or treaties of the United States. Summarize *briefly* the facts supporting each ground. (e.g. what happened during the state proceedings that you contend resulted in a violation of the constitution, law or treaties of the United States.) If necessary, you may attach pages stating additional grounds and/or facts supporting each ground.

(a) **GROUND ONE:** Jury misconduct, contaminating influence outside court.

There is no assurances that the jury could not be influenced by what they observed, instruction error,

Supporting FACTS: Three jurors and one alternate had unauthorized observation of the defendant being escorted to a holding cell on a recess from courtroom. The defendant was pushed up to a wall to let one juror by. This caused a great substantial likelihood that influenced the juror because on the way back from the recess, the other jurors were waiting at the same place. (To see if it is true that the defendant is in custody.) The defendant immediately brought this to the trial court's attention, who failed to hold an evidentiary hearing, the defendant moved for a mistrial, but trial court just wanted to admonish the jury. But further prejudiced the defendant by stating in the admonishment, "That the defendant is in custody."... "Objection to the admonishment." The defendant now states ( I have been locked-up for three years already). There is no assurances that any jury could not be biased by all of this. A fair trial would be unlikely! With a defense of entrapment. The defendant in custody for three years already.

Did you raise **GROUND ONE** in the California Supreme Court?

Yes  No.

If yes, answer the following:

- (1) Nature of proceeding (i.e., petition for review, habeas petition): Application Review Habeas
- (2) Case number or citation: N/A
- (3) Result (attach a copy of the court's opinion or order if available): Pending

(b) **GROUND TWO:** Wrongful restraints once in jeopardy, double jeopardy, violation of due process of law. Continuation cause unfair trial. Order remand/reversal of conviction, move for O.R. release.

**Supporting FACTS:** The defendant is unable to receive a fair trial and causing new issues to be raised. Circumstances exist that render such process ineffective to protect the rights of the defendant/petitioner which resulted in a decision that was contrary to or, involved an unreasonable application of clearly established federal law. (restraint on aman's liberty) making him guilty before a panel. (Also because of the intentional invidious discrimination.) Under Health and Safety Code §11367 provides immunity to any person working under their immediate direction, supervision or, instruction, are immune from prosecution (People V. McIntyre) (1990) 271 Cal.RPTR. 467. If crime was suggested by another, the defendant is not criminally liable. If statute is susceptible of mor than one interpretation, express language of health and safety code §11367 which provides that such persons are immune from prosecution under this division. "This is intentional, invidious discrimination," and the court refuses to enable officers of the law to consummate illegal, or unjust scheme designed to foster such acts. A conviction of the accused would violate his constitutional rights to due process of law. (See: Attachments and exhibits)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Did you raise **GROUND TWO** in the California Supreme Court?

Yes  No.

If yes, answer the following:

- (1) Nature of proceeding (i.e., petition for review, habeas petition): \_\_\_\_\_ Same \_\_\_\_\_
- (2) Case number or citation: \_\_\_\_\_ Same \_\_\_\_\_
- (3) Result (attach a copy of the court's opinion or order if available): \_\_\_\_\_ Same \_\_\_\_\_

(c) **GROUND THREE:** Abuse of discretion, unreasonable application of clearly established Federal Law (Unjust Decision)

**Supporting FACTS:** An unjust decision is one in which there is at least demonstrated a manifest misapplication of existing principle resulting in substantial injustice. The Due Process clause of the fourteenth Amendment bars reprocsecution for the same offense. If such procedure is fundamentally unfair (Three Trials). All unfair trial. Proof of Bias of a presiding justice with her abuse of discretion, just to give the prosecution unlimited opportunities to get a conviction.

Jury misconduct, such process ineffective to protect the rights of the defendant, who is to be believed innocent before he is proven guilty, not to look guilty before trial. (Personal liberty is of so great momnt in the eye of the law.) But it is unjust to take it away! It affects the foundation of the whole proceedings. See: (FAY v. NOIA) (1963) 372 US 391

See: Attachments and Exhibits

Did you raise **GROUND THREE** in the California Supreme Court?

Yes  No.

If yes, answer the following:

- (1) Nature of proceeding (i.e., petition for review, habeas petition): Same
- (2) Case number or citation: Same
- (3) Result (attach a copy of the court's opinion or order if available): Same

(d) **GROUND FOUR:** "Restraints on a Man's Liberty" Request to/for O.R. Release on own recognizance involved an unreasonable application of clearly established Federal Law.

Supporting FACTS: The defendant's continued detention at these facilities caused under interences/influence by trial jury who believed the petitioner/defendant guilty of this and baybe other crimes. This Affected the foundation of the whole proceedings. (Let alone the Defendant's defense of entrapment.) (Request a application for O.R. Release pending outcome of proceedings)

The court may grant/order the release of petitioner pending habeas corpus petition's determination. In RE Newbern (1960) 53 Cal.2D786

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Did you raise **GROUND FOUR** in the California Supreme Court?

Yes  No.

If yes, answer the following:

- (1) Nature of proceeding (i.e., petition for review, habeas petition): Same
- (2) Case number or citation: Same
- (3) Result (attach a copy of the court's opinion or order if available): Same

23. Do you have any petition or appeal **now pending** in any court, either state or federal, pertaining to the judgment under attack?  
 Yes  No

24. If your answer to #23 is "Yes," give the following information:

- (a) Name of Court: COURT OF APPEALS AND SUPREME COURT
- (b) Case Number: D050139; D051427
- (c) Date action filed: N/A  
SAME
- (d) Nature of proceeding: \_\_\_\_\_  
\_\_\_\_\_

- (e) Name(s) of judges (if known): SAME
- (f) Grounds raised: SAME  
\_\_\_\_\_

- (g) Did you receive an evidentiary hearing on your petition, application or motion?  
 Yes  No PENDING

25. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment attacked herein:

- (a) At preliminary hearing: MS. GULLIAMS  
\_\_\_\_\_
- (b) At arraignment and plea: MS GUILLIAMS OR SOME OTHER ATTORNEY  
\_\_\_\_\_
- (c) At trial: IN PRO PER  
\_\_\_\_\_
- (d) At sentencing: IN PRO PER  
\_\_\_\_\_
- (e) On appeal: HOWARD C. COHEN, JOHN L. STALEY  
\_\_\_\_\_
- (f) In any post-conviction proceeding: N/A  
\_\_\_\_\_
- (g) On appeal from any adverse ruling in a post-conviction proceeding: N/A  
\_\_\_\_\_

26. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at the same time?

Yes  No

27. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack?

Yes  No

(a) If so, give name and location of court that imposed sentence to be served in the future:

N/A

(b) Give date and length of the future sentence: \_\_\_\_\_ N/A \_\_\_\_\_

(c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future?

Yes  No

#### 28. Consent to Magistrate Judge Jurisdiction

In order to insure the just, speedy and inexpensive determination of Section 2254 habeas cases filed in this district, the parties may waive their right to proceed before a district judge and consent to magistrate judge jurisdiction. Upon consent of all the parties under 28 U.S.C. § 636(c) to such jurisdiction, the magistrate judge will conduct all proceedings including the entry of final judgment. The parties are free to withhold consent without adverse substantive consequences.

The Court encourages parties to consent to a magistrate judge as it will likely result in an earlier resolution of this matter. If you request that a district judge be designated to decide dispositive matters, a magistrate judge will nevertheless hear and decide all non-dispositive matters and will hear and issue a recommendation to the district judge as to all dispositive matters.

You may consent to have a magistrate judge conduct any and all further proceedings in this case, including the entry of final judgment, by indicating your consent below.

Choose only one of the following:

Plaintiff consents to magistrate judge jurisdiction as set forth above.

OR

Plaintiff requests that a district judge be designated to decide dispositive matters and trial in this case.

29. Date you are mailing (or handing to a correctional officer) this Petition to this court: \_\_\_\_\_

Wherefore, Petitioner prays that the Court grant Petitioner relief to which he may be entitled in this proceeding.

SIGNATURE OF ATTORNEY (IF ANY)

I declare under penalty of perjury that the foregoing is true and correct. Executed on

12-17-2007

(DATE)

Dan C. Brown

SIGNATURE OF PETITIONER

CONTENTS OF CASES

JACKSON VS. SUPERIOR COURT IN AND FOR SAN DIEGO COUNTY (1937) 10 CAL. 2d 350  
FAY VS. NOIA (1963) 372 US 391

CURRY V. SUPERIOR COURT (1970) 2 CAL.3d 707, 718

PEOPLE V. STURDY (1965) 235 CAL.APP.2d 306, 314

PEOPLE V. UPSHAW (1976) 13 CAL.3d 29, 33

PEOPLE V. FRANKLIN. (1976) 56 CAL.3d 18, 23

RICHARD M. V. SUPERIOR COURT (1971) 4 CAL.3d 370, 376

UNITED STATES V. JORN 400 US 470, 485

OREGON V. KENNEDY 456 US 667

WADE V. HUNTER 336 US 684, 689

ARIZONA V. WASHINGTON 438 US 497, 509

UNITED STATES V. TATEO 377 US 463

GREEN V. UNITED STATES (1957) 355 US. 184

UNITED STATES V. DINITZ 424 US. 600

UNITED STATES V. SIMPSON (1996) 94F.3d 1373

UNITED STATES V. FIGUEROA - SOTO (9th CIR 1991) 938F.2d 1015, 1019

PEOPLE V. HERNANDEZ (2002) 95 CA 4th 1346

IN RE WINCHESTER (1960) 53 CAL2d 528, 534

UNITED STATES V. VASQUEZ (9th CIR 1979) 597F.2d 192, 193

CARAFAS V. LAVALLEE 391 US 234 (1968)

U.S. EX REL PITTS V. RUNDLE 325F.SUPP 480 (1971)

UNITED STATES V. BURDICK 284F.SUPP 685 (1968)

RASUL V. BUSH 542 US 466 (2004)

ROUSE V. CAMERSON 373F.2d 451

ARCHULETA V. HEDRICK C.A.8 (MO) 365F3d 644 (2004)

U.S. SIMPSON, C.A. 10 (KAN) 1996 94F3d 1373

U.S. V. BURDICK E.D. PA. 1968 284F.SUPP 685

A review De Nova of Case #SCD 78177 will find that a great miscarriage of justice has befallen on petitioner/appellant. Which caused successive prosecution to convict the petitioner/appellant, which also caused such procedures to become fundamentally unfair. Just to give the prosecution more opportunity to convict. First trial, the jury deadlocked 11-1, in favor of a guilty verdict, trial court asked the defense, do you agree to a mistrial, the defense did not consent to a mistrial and made an objection to the jury being discharged. The trial court and court reporter intended to provoke an agreement to consent. This is an attack on the petitioner/appellant to consent or the trial court would claim one under legal necessity. Because of the great power of discretion, which the trial court abused and further violated the petitioner's right in the second trial and upon other issues would not rescue herself from this case. Once upon the objection and refusal to the consent. The trial court had other options which the defense and the prosecution could discuss before or without the discharge of the jury.

## OPTIONS

- 1.) Put an alternate in place of one juror.
  - 2.) Out of the presence of the jury, both the defense and prosecution can negotiate on a plea agreement.

## EVIDENCE OF ABUSE OF DISCRETION

- 24       1.) Denying petitioner the right to counsel would constitute an error.

25       2.) Denying petitioner the right to a fair and impartial trial.

26       3.) Denying petitioner's first trial transcripts, to enable him to present  
27                   an adequate defense.

28       4.) Judicial misconduct by failing to recuse/disqualify herself.

1           Attack the general character of the defendant to accept consent  
2           to a mistrial or trial court would rule to give the prosecution  
3           unlimited opportunities to get a conviction.

4           Which exposure the defendant's defense to provide the state with a major  
5           advantage in preparing for the second trial.

6

7           **JURY MISCONDUCT (The jury learned of the petitioner's custody unfair)**

8           Substantial public interests were involved in issues relating to continued  
9           detention of Habeas petitioner at county jail and state prison facility.  
10          Therefore, the Court                   can exercise it's discretion to consider issues  
11          not raised in briefs. Where dominant theme of pro-se petition was that continued  
12          detention of petitioner at these facility was unfair, unlawful and  
13          unconstitutional. Circumstances exists that render such process ineffective  
14          to protect the right of the applicant/petitioner, resulting in a decision that  
15          was contrary to or involved an unreasonable application of clearly established  
16          federal law, as determined by the Supreme Court of the United States. The trial  
17          court's failure to conduct sufficient inquiry into allegations of juror  
18          misconduct presents issue of abuse of discretion and required new trial. Due  
19          process clause of 14th Amendment bars reprocsecution for same offense. Such  
20          procedure is fundamentally unfair.

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1 But because of the jury misunderstanding of entrapment law or instruction, the  
2 trial court abused his discretion by ruling to not allow the defense the reading  
3 of display "Persona Non Grata". Petitioner's defense is to show that the police  
4 manufactured the crime, which otherwise would not have occurred. In testimony  
5 by Officer Martinez stated, Team #8 was out looking for small time drug dealer,  
6 which they did not find but manufactured/created a crime. This is police conduct  
7 that is not to be tolerated. Also under (Health and Safety Code) in performance  
8 of their official duties, and any person working under their immediate direction  
9 or instruction are immune from prosecution. The petitioner is now working under  
10 Officer Martinez' authority to locate narcotics or find someone who deals  
11 narcotics under his request. Thus the petitioner is clothed with the same  
12 immunity by the action of the undercover officer's immediate request and  
13 direction to assist in locating narcotics. Because of this intentional invidious  
14 discrimination, the prosecution, San Diego Police Department and the San Diego  
15 Superior Court are engaged in a deliberate systematic practice of discriminatory  
16 enforcement of criminal law. The petitioner requests immunity from this form  
17 of prosecution.

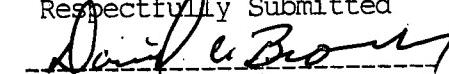
18  
19 The granting of this Writ of Habeas Corpus is warranted.  
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ISSUES NOT RAISED EARLIER CAN BE EXCUSED

The petitioner must be given an opportunity to make an explanation as to his failure to raise his claims earlier. Because of wrongful restraints upon the petitioner's liberty. After appeals court's order remand/reversal of conviction, petitioner moved for O.R. Release or bail hearing, but got no response from Superior Court. Later upon new request in front of Judge Brown, bail was raised higher than previously. Because of wrongful restraints upon petitioner's liberty. One who is in custody in violation of constitutional laws of the United States is entitled to relief. In each trial from start to finish, the petitioner has been held in custody, not allowed to be free, but just to look like a guilty person. Which the jury did draw inferences/influence too, Because of the abuse of discretion by Judge Lasiter in earlier trial, which started these issues and placed the petitioner in jeopardy over and over again. Because of this, the petitioner is unable to receive a fair trial, causing new issues to be raised. (the physical imprisonment) There are other restraints on a man's liberty. The due process clause of the Fourteenth Amendment bars reprosecutions for the same offense. If such procedure is fundamentally unfair. Circumstances exist that render such process ineffective to protect the rights of the petitioner resulted in a decision that was contrary to, or, involved an unreasonable application of clearly established federal law. As determined by the United States Supreme Court. Petitioner is entitled to relief in Habeas Corpus and court is required to dispose of matter as law and justice require.

Date: 12-17-2007

Respectfully Submitted



David C. Brown Pro-Se

**DECLARATION OF DAVID BROWN**

I, DAVID BROWN, do declare as follows:

- 1.) That I am the defendant in said action.
  - 2.) That I make this declaration in support
  - 3.) That I am over the age of 18 years.

I, DAVID BROWN, do declare that the foremention is true and correct under penalty of perjury by the laws of the state of California.

Dated: 12-17-2007

Respectfully submitted,

DAVID BROWN, Pro Se

## **PRAYER FOR RELIEF**

I, David Brown, do pray as follow:

1. That the judgment in the matter, Case #SCD178177 in San Diego Superior Court is reversed/vacated.
  2. That there is no further prosecution of petitioner/defendant David Brown.
  3. That he application for O.R. recognizance release of the petitioner David Brown be granted.
  4. That the petitioner be granted the same immunity as stated in Health and Safety Code §11367.

I, David Brown, do pray that the aforementioned is true and correct under the penalty of perjury by the laws of the state of California. Executed this 12-17 day of 2007 at Chino, California.

12-17-2007

Respectfully submitted,

Daniel Boren

DAVID C. BROWN  
In propria persona

# **Exhibits A**

1 BILL LOCKYER  
 Attorney General of the State of California  
 2 ROBERT R. ANDERSON  
 Chief Assistant Attorney General  
 3 GARY W. SCHONS  
 Senior Assistant Attorney General  
 4 DOUGLAS P. DANZIG  
 Deputy Attorney General  
 5 KEVIN R. VIENNA  
 Deputy Attorney General  
 6 State Bar No. 186751  
 110 West "A" Street, Suite 1100  
 7 San Diego, CA 92101  
 P.O. Box 85266  
 8 San Diego, CA 92186-5266  
 Telephone: (619) 645-2198  
 9 Fax: (619) 645-2191  
 Attorneys for Respondent

10  
 IN THE UNITED STATES DISTRICT COURT  
 11  
 FOR THE SOUTHERN DISTRICT OF CALIFORNIA  
 12

13 DAVID C. BROWN,  
 14 Petitioner,  
 15 v.  
 16 J.S. WOODFORD, Director, et al.,  
 17 Respondent.

05 CV 0061 IEG (PCL)

**MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF  
MOTION TO DISMISS**

No Hearing Requested

19  
 20 INTRODUCTION

21 Brown was convicted of drug offenses and sentenced in September 2004. His appeal  
 22 currently is pending. Where the state courts have not yet ruled on his appeal, Brown's federal habeas  
 23 petition is premature and must be dismissed.

24 PROCEDURAL HISTORY

25 The San Diego District Attorney charged Brown with three felony drug counts arising from  
 26 Brown's sale of cocaine base to an undercover police officer. (Lodgment 1 (Clerks Transcript,  
 27 hereinafter CT) at 1, 392.) Brown also was alleged to have suffered a previous strike conviction for  
 28 the crime of assault with a deadly weapon, within the meaning of California's Three Strikes law.

1 DAVID C. BROWN  
2 V55303  
3 P.O. BOX 500 C.I.M. R.C.E.  
4 CHINO, CA 91708-0500  
5 IN PROPIA PERSONA

FILED

SEP 14 2005

CLERK, U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA  
DEPUTY

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

DAVID BROWN

PETITIONER

VS

J.S. WOODFORD, DEPUTY

RESPONDENT(S)

CASE # 08-CV-0061-IEG (PCL)

REQUEST FOR APPLICATION

OF CERTIFICATE FOR

APPEALABILITY

WITH MEMORANDUM AND

POINTS OF AUTHORITY

OR FOR RECONSIDERATION OF WRIT

TO THE COURT, THE CLERK OF THE COURT, AND ALL  
PARTIES CONCERNED PETITIONER/MOVANT NOW MOVES  
THIS COURT FOR A REQUEST FOR APPLICATION OF  
CERTIFICATE FOR APPEALABILITY TO ENTER INTO THE  
9TH CIRCUIT ON APPEAL

31

Filed 4/24/06 P. v. Brown CA4/1

**NOT TO BE PUBLISHED IN OFFICIAL REPORTS**

California Rules of Court, rule 977(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 977(b). This opinion has not been certified for publication or ordered published for purposes of rule 977.

COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

D045453

Plaintiff and Respondent,

v.

(Super. Ct. No. SCD178177)

DAVID CARLTON BROWN,

Defendant and Appellant.

APPEAL from a judgment of the Superior Court of San Diego County, Melinda J. Lasater, Judge. Reversed and remanded.

This case illustrates some of the problems that can arise when a criminal defendant represents himself and engages in obstreperous behavior. In November 2003 the San Diego County District Attorney filed an information charging David Carlton Brown in count 1 with sale of cocaine base in violation of Health and Safety Code section 11352, subdivision (a), and in count 2 with possession of cocaine base for sale in violation of

1 DAVID BROWN  
2 V-55303  
3 P.O. BOX 500 C.I.M. R.C.E.  
4 CHINO, CA 91708  
5 IN PROPERIA PERSONA

6  
7  
8 THE SUPERIOR COURT OF CALIFORNIA  
9 IN AND FOR THE COUNTY OF SAN DIEGO  
10 THE STATE OF CALIFORNIA | CASE# SCD178177  
11 PLAINTIFF | NOTICE OF MOTION AND MOTION FOR  
12 | APPLICATION FOR BAIL AND/OR RECOGNIZANCE  
13 VS. | RELEASE. UPON REVERSAL OF CONVICTION  
14  
15 DAVID BROWN  
16 DEFENDANT

17  
18 TO THE COURT, THE CLERK OF THE COURT, AND ALL PARTIES CONCERNED. NOW  
19 COME THE MOVANT FOR A REQUEST FOR APPLICATION FOR BAIL AND/OR RECOGNIZAN-  
20 ANCE RELEASE. UNDER BOTH UNITED STATES AND CALIFORNIA CONSTITUTION THE  
21 GRANTING OF BAIL OR O.R. RELEASE UPON A REVERSAL OF CONVICTION IF PROPER.  
22 THIS REQUEST IS BASED ON MOVANT'S APPLICATION, THE ATTACHED DECLARATION OF  
23 MOVANT, AND THE PLEADINGS AND RECORDS ON FILE IN THIS CASE.

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8           **THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
9           **IN AND FOR THE COUNTY OF SAN DIEGO**

10  
11 IN THE MATTER OF THE APPLICATION OF:           } HC 17755 – Third Petition  
12    } SCD 178177  
13 DAVID CARLTON BROWN,                           } ORDER DENYING PETITION FOR  
14    } WRIT OF HABEAS CORPUS  
15    }  
16 \_\_\_\_\_  
17    }  
18    }

19    }  
20    }  
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22    }  
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AFTER REVIEWING THE PETITION FOR WRIT OF HABEAS CORPUS AND THE COURT FILE IN THE ABOVE-REFERENCED MATTER, THE COURT FINDS AS FOLLOWS:

Petitioner was charged with one count of selling cocaine base, while having a prior conviction for sale of a controlled substance (Health & Safety Code §§ 11352(a), 1170.2(a)) and one count of possession / purchase of cocaine base for sale (Health & Safety Code §11351.5). At the first trial the jury deadlocked 11-1 in favor of a guilty verdict and a mistrial was declared. The jury in the second trial convicted Petitioner of the above-referenced charges on August 25, 2004, and he was sentenced to the total term of 11 years on September 23, 2004.

Although Petitioner filed a timely notice of appeal on November 17, 2004, he also filed numerous petitions with the San Diego Superior Court and various other courts before, during and after that date. On April 24, 2006, the Fourth District Court of Appeal reversed the judgment noted above and remanded for a new trial.

COURT OF APPEAL - FOURTH APPELLATE DISTRICT

DIVISION ONE

Stephen M. Kelly, Clerk  
D

STATE OF CALIFORNIA

MAR 19 2007

Court of Appeal Fourth District

In re DAVID BROWN

D049891

on

(San Diego County  
Super. Ct. No. SCD 178177)

Habeas Corpus.

THE COURT:

The petition for a writ of habeas corpus has been read and considered by Presiding Justice McConnell and Associate Justices Benke and Huffman.

David Brown contends his trial was unfair, there was juror misconduct and instructional error. Brown has a pending appeal from the judgment of conviction (D050139). His claims can be addressed on direct appeal.

The petition is denied.

*Benke*

BENKE, Acting P. J.

Copies to: All parties

S150045

**IN THE SUPREME COURT OF CALIFORNIA**

**En Banc**

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In re DAVID BROWN on Habeas Corpus

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The petition for writ of habeas corpus is denied. (See *In re Dixon* (1953) 41 Cal.2d 756.)

**SUPREME COURT  
FILED**

JUL 11 2007

Frederick K. Ohlrich Clerk

---

Deputy

GEORGE

---

Chief Justice

COURT OF APPEAL - FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re DAVID C. BROWN  
on  
Habeas Corpus.

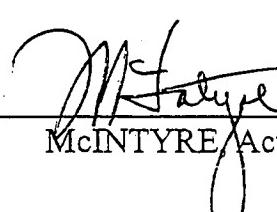
D051427

(San Diego County  
Super. Ct. No. SCD 178177)

Stephan M. Kelly, Clerk  
Court of Appeal, Fourth District  
AUG 30 2007

THE COURT:

The petition for writ of habeas corpus *In re David Brown D051427*, will be considered at the same time as the pending appeal, *People v. Brown D050139*.

  
McINTYRE Acting P. J.

Copies to: All parties

COURT OF APPEAL - STATE OF CALIFORNIA  
FOURTH APPELLATE DISTRICT  
DIVISION ONE

In re DAVID CARLTON BROWN on Habeas Corpus.

D051427

San Diego County No. SCD178177

✓ L E Z D  
Decided by Clerk [initials]

DEC 03 2007

Court of Appeal Fourth District

THE COURT:

Petitioner's unserved "Motion for an Order to Show Cause and Order for Consolidation" of D051427 (In re Brown on Habeas Corpus) and D050139 (People v. Brown) received on November 27, 2007, is DENIED. The clerk of the court is directed to forward a copy of the motion to appellant's counsel on appeal, John L. Staley.

*Benke*

Acting Presiding Justice

cc: All Parties

1           David C. Brown  
2           F-55818  
3           CIM MSF  
3           POB 600  
3           Chino, CA 91708-600

**4** In propria persona

CALIFORNIA COURT OF APPEALS

FOURTH APPELLATE DISTRICT DIVISION I

17 TO THE HONORABLE COURT AND ALL CONCERNED PARTIES:

18 NOW COMES petitioner/movant, David C. Brown, to request for "OR"  
19 recognition release pending outcome of proceedings:

26 //

27 //

**TODAY'S  
L.A. TIMES**

**1/14-2004**

**Exhibit**

# Some kept in prisons too long

State miscalculation of credit for good behavior may affect thousands, corrections officials say.

By MICHAEL ROTSTEIN

SACRAMENTO — Up to 33,000 prisoners in California may be entitled to release earlier than scheduled because the state has miscalculated their sentences, corrections officials said Wednesday.

For nearly two years, the overburdened state prison agency has failed to recalculate the sentences of those inmates despite a series of court rulings, including one by the California Supreme Court. The judges said the state applied the wrong formula when crediting certain inmates for good behavior behind bars.

Some inmates released in recent months almost certainly stayed longer in prison than they should have, said corrections officials, employees and advocates for prisoners. Some currently in prison most likely should be free, they said. But many whose sentences are too long are not scheduled to be released for months or years.

The inmates in question — 19% of the state prison population — are serving consecutive sentences for violent and nonviolent offenses. The sentencing errors range from a few days to several years.

Corrections officials say they have been unable to calculate the sentences properly because of staffing shortages and outdated computer systems that force analysts to do the complex work by hand.

Keeping prisoners institutionalized for too long wastes

millions of dollars a year. A preliminary analysis of the problem in August by the Department of Corrections and Rehabilitation concluded that the longer sentences boost the state's already swollen prison population by 600 inmates a day at a cost of nearly \$26 million annually.

The state has about 173,000 prisoners and has undertaken the addition of 53,000 more beds because of overcrowding, a situation that has helped erode the state's shaky finances.

This is another function of the overcrowding crisis, said Don Specter, director of the Prison Law Office, a Bay Area group that represents inmates in court.

They have to handle the number of prisoners who are in the system. They can't meet their medical or mental health needs. Now it appears that there is some reason to believe that they can't even calculate their release dates.

[See Inmates Page B8]

# Thousands may merit early release from state prisons

*Unnates, from Page B1*

dates correctly. Specter said 10,000 inmates who are kept too long would have grounds to sue the corrections department.

Scott Kernan, chief deputy secretary for adult prison operations, said the agency hopes to hire 85 more analysts to begin working on the problem. We believe it's a problem, Kernan said. We're taking it very seriously in terms of finite resources.

Corrections officials said they plan to ask Gov. Arnold Schwarzenegger's Criminal Justice Commission next week for the additional personnel.

The corrections department had been taking 15% off sentences for good behavior — the state's first violent offenders — even when part of the term was for nonviolent crimes. But in three decisions last year, state courts ruled that the state should not give inmates credit for nonviolent crimes.

On the most recent edition of their sentences, in the most recent case decided Jan. 12, 2006, the 9th U.S. Circuit Court of Appeals decided that 10,000 inmates who received their first release date should have been about 10 months earlier than the state calculated. The judges agreed and he was paroled Aug. 27, 2006.

Tate had been convicted in Los Angeles County in 2001 of attempted robbery using a firearm, receiving a 1½-year sentence for violent felony. In 2003, he received two more years after pleading guilty to possession of a weapon in prison, considered a nonviolent crime.

But after the 5th District decision, Corrections officials decided they would not immediately recalculate the sentences of all those eligible, according to prison case records analysis and the labor leaders who represent them in the Service Employees International Union, or SEIU, 1000. Instead, administrators instructed staff to notify those prisoners who committed or committed

Court Order would receive re-

vised sentences, union officials said.

Kernan said he was not aware of a similar situation having occurred at his institution, but added that would be a reasonable course of action given the department's finite resources.

The union filed a lawsuit Wednesday in Superior Court in Sacramento against the Corrections Department. Secretary James Tilton and Schwarzenegger it accuses them of violating state and federal law by failing to fix the errors. The union called for the hiring of 100 more case records analysts.

The department chronically misunderstated Marc Bustista, a vice president of the union, said Wednesday. It spent a lack of leadership,

sampling of the 33,000 prisoners to determine the severity of the problem. The study indicated that allowing some release dates might cost only a few days, correcting other sentences would reduce the inmate population by 600 a day.

Kernan said the agency initially requested 85 more analysts positions in the summer of 2006. Some new sentence calculations could be made. But they were denied by Schwarzenegger's budget officials. H.D. Palmer, a spokesman for the Department of Finance and the Corrections agency, was told to fill vacant vacancies first and given extra salary allotments.

Meanwhile, analysts say they are working hundreds of hours overtime. The state's 25-year-old computers cannot analyze the complex sentencing formulas created by a patchwork of laws passed over the past three decades, union officials say, and modified by five governors.

Tom Garcia, a case records analyst at Central California Women's Facility in Chowchilla, complained to him, the governor and the legislature pass new laws requiring nothing to reform the system, while prison workers have to share desks and computers, and request for an increase in their pay.

"They're going to build all these facilities to help reform Garcia said. "It's all great, but we need to fix the system the way it is now."

*michael.oyle@latimes.com*

AND [www.prisonlaw.com](http://www.prisonlaw.com)

**Exhibit**

STATE OF CALIFORNIA - DEPARTMENT OF CORRECTIONS AND REHABILITATION

ARNOLD SCHWARZENEGGER, GOVERNOR

**DIVISION OF ADULT OPERATIONS  
CALIFORNIA INSTITUTION FOR MEN**P.O. Box 128  
Chino, CA 91708-0128

May 21, 2007

Mr. John L. Staley, Attorney at Law  
11770 Bernardo Plaza Court, Suite 305  
San Diego, CA 92128

Dear Mr. Staley:

This is in response to your letter dated May 2, 2007, regarding Inmate, David C. Brown, F-55818. In your letter you express concerns regarding the release date computation for Mr. Brown.

After a thorough review by California Institution for Men case records staff, it was determined that credit pursuant to Penal Code 2900.1 was not applied because sentencing documents received from the court did not indicate that this was a resentenced case. Upon review of previous CDC number V-55303, it was determined that Mr. Brown is entitled to credit for the time he spent in custody under the jurisdiction of the Department of Corrections from October 28, 2004 to August 14, 2006, and conduct credits for that period (786 days) were applied.

Case Records staff recalculated Mr. Brown's release date, which is now May 8, 2008.

I hope this information has proves helpful to you. If you have any questions regarding this information, please contact Mary James, Correctional Counselor III, at (909) 606-7081.

Sincerely,

  
M. E. Poulos  
Warden  
California Institution for Men



STATE OF CALIFORNIA  
GA-22 (9/92)

## INMATE REQUEST FOR INTERVIEW

DEPARTMENT OF CORRECTIONS

DATE	TO	FROM (LAST NAME)	CDC NUMBER
6-06-07	APPEALS COORDINATOR	BROWN, DAVID	F55818
HOUSING	BED NUMBER	WORK ASSIGNMENT	JOB NUMBER
WD45	2164	PRE-RELEASE AIDE/CLERK	FROM N/A TO N/A
OTHER ASSIGNMENT (SCHOOL, THERAPY, ETC.)		ASSIGNMENT HOURS	
		FROM N/A TO N/A	

Clearly state your reason for requesting this interview.

You will be called in for interview in the near future if the matter cannot be handled by correspondence.

I'VE SENT A 602 TO CASE RECORDS MANAGER "MR WILKERSON"  
 REGARDING RECOMPUTATION OF CUSTODY CREDITS UNDER SCR 15-2525  
 REQUEST FOR COMPUTATION REVIEW HEARING WITHIN 15 DAYS. <sup>2525</sup> ~~15~~ <sup>2526</sup>  
 I HAVE NOT BEEN NOTIFY OF ANY DECISION ~~WHY~~ <sup>2 JUL 2007 BACK TO ME</sup>

Do NOT write below this line. If more space is required, write on back.

INTERVIEWED BY

DISPOSITION



THE INMATE SHALL BE NOTIFIED AT LEAST 24 HOURS PRIOR TO THE HEARING VIA THE CDC FORM 1032 (REV 12/86).

ALSO THE APPELLANT SHALL BE PROVIDED A COPY OF THE COMPUTATION REVIEW HEARING. ALSO HERE IS A COPY OF WHAT MY ATTORNEY HAS REQUESTED FROM THE WARDEN. PLEASE CALL HIM IF THERE IS FURTHER PROBLEMS.

THANK YOU

DAVID BROWN

F-55818

OR

V55343

B-23-2007

TO CHIEF, INMATE APPEALS  
DIRECTOR OF CORRECTIONS

I HAVE PURSUE THESE ISSUES PROPERLY AND IN A TIMELY MANNER, BUT IF NOT FOR STAFF'S LACK OF COOPERATION, AND UN-RETURNED ORIGINAL 602 APPEAL. THIS WAS DONE ON PURPOSE BY STAFF TO DISMISS, REJECT, AND CANCEL ANY ATTEMPT TO CONTINUE PURSUE OF THESE ISSUES. UNDER C.O.C. # V55303 INMATE Brown was patiently waiting for a decision of a 602 appeal filed (NEVER RETURNED). But upon THE JUDGMENT OF HIS CONVICTION BEING REVERSED AND REMANDED BACK TO THE "COUNTY COURT". INMATE STAY MORE THAN FOUR MONTHS BEFORE RETURNING BACK TO THE C.O.C. UNDER A NEW NUMBER # F-55818. INMATE Brown RESTARTED THE APPEAL. BUT STAFF MEMBER WILL NOT COOPERATE OR COULD NOT RESOLVE THE MATTER. JUST LIKE THE TIME RE-COMPUTATION OF CUSTODY CREDITS, INMATE BROWN IS OWNED MONEY FOR WORK UNDER OLD NUMBER # V55303.

PLEASE RIGHT THIS WRONG !!

INMATE David Brown F-55818  
David C. Brown

## CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE SECOND PAGE OF THIS FORM.)

## I (a) PLAINTIFFS

David Carlton Brown

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF San Bernardino  
(EXCEPT IN U.S. PLAINTIFF CASES)

2254 DEFENDANTS 1983	
FILING FEE PAID	
Yes	No <input checked="" type="checkbox"/>
HEAVY MOTION PAPER COUNT OF PAPER USED FOR FIRST LISTED DEFENDANT (IN U.S. PLAINTIFF CASES ONLY)	
Yes	No
COPIES SENT TO	
Court	Attorney Known <input checked="" type="checkbox"/>

Poulos, et al.

FILED

JAN - 2 2008

CLERK, U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA  
DEPUTY

## (c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

David Carlton Brown  
PO Box 600  
Chino, CA 91708  
F-55818

'08 CV 0017 JM NLS

## II. BASIS OF JURISDICTION (PLACE AN X IN ONE BOX ONLY)

- 1 U.S. Government Plaintiff  3 Federal Question  
(U.S. Government Not a Party)
- 2 U.S. Government Defendant  4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN X IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)  
(For Diversity Cases Only)

- |   |   |   |   |
|---|---|---|---|
| Citizen of This State                   | <input type="checkbox"/> 1 <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State     | <input type="checkbox"/> 4 <input type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2 <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 <input type="checkbox"/> 6 |

## IV. CAUSE OF ACTION (CITE THE US CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY).

28 U.S.C. 2254

## V. NATURE OF SUIT (PLACE AN X IN ONE BOX ONLY)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	<b>PERSONAL INJURY</b>	<b>PERSONAL INJURY</b>	<b>PROPERTY RIGHTS</b>	<input type="checkbox"/> 400 State Reappointment
<input type="checkbox"/> Marine	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 362 Personal Injury-Medical Malpractice	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> Miller Act	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 365 Personal Injury-Product Liability	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> Negotiable Instrument	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 450 Commerce/ICC Rates/etc.	<input type="checkbox"/> 450 Commerce/ICC Rates/etc.
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 330 Federal Employers' Liability	<b>PERSONAL PROPERTY</b>	<input type="checkbox"/> 460 Deportation	<input type="checkbox"/> 460 Deportation
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations	<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 810 Selective Service	<input type="checkbox"/> 810 Selective Service
<input type="checkbox"/> 153 Recovery of Overpayment of Veterans Benefits	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 850 Securities/Commodities Exchange	<input type="checkbox"/> 850 Securities/Commodities Exchange
<input type="checkbox"/> 160 Stockholders Suits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 861 HIA (1958)	<input type="checkbox"/> 875 Customer Challenge 12 USC
<input type="checkbox"/> Other Contract	<input type="checkbox"/> 360 Other Personal Injury	<b>LABOR</b>	<input type="checkbox"/> 862 Black Lung (923)	<input type="checkbox"/> 891 Agricultural Acts
<input type="checkbox"/> 195 Contract Product Liability		<input type="checkbox"/> 710 Fair Labor Standards Act	<input type="checkbox"/> 863 DIWC/DIW (405(g))	<input type="checkbox"/> 892 Economic Stabilization Act
<b>REAL PROPERTY</b>	<b>CIVIL RIGHTS</b>	<input type="checkbox"/> 720 Labor/Mgmt. Relations	<input type="checkbox"/> 864 SSID Title XVI	<input type="checkbox"/> 893 Environmental Matters
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act	<input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 894 Energy Allocation Act
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 442 Employment	<input type="checkbox"/> 740 Railway Labor Act	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)	<input type="checkbox"/> 895 Freedom of Information Act
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 443 Housing/Accommodations	<input type="checkbox"/> 790 Other Labor Litigation	<input type="checkbox"/> 871 IRS - Third Party 26 USC 7609	<input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice
<input type="checkbox"/> 240 Tort to Land	<input type="checkbox"/> 444 Welfare	<input type="checkbox"/> 791 Empl. Ret. Inc.		<input type="checkbox"/> 950 Constitutionality of State
<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> Security Act		<input type="checkbox"/> 890 Other Statutory Actions
<input type="checkbox"/> 290 All Other Real Property				

## VI. ORIGIN (PLACE AN X IN ONE BOX ONLY)

- 1 Original Proceeding  2 Removal from State Court  3 Remanded from Appellate Court  4 Reinstated or Reopened  5 Transferred from another district (specify)  6 Multidistrict Litigation  7 Appeal to District Judge from Magistrate Judgment

## VII. REQUESTED IN COMPLAINT:

 CHECK IF THIS IS A CLASS ACTION UNDER f.r.c.p. 23

DEMAND \$

Check YES only if demanded in complaint:

JURY DEMAND:  YES  NO

## VIII. RELATED CASE(S) IF ANY (See Instructions): JUDGE

Docket Number

DATE 1/2/2008

SIGNATURE OF ATTORNEY OF RECORD

R. Miller